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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit 1616

Application of Jeffrey A. Martin et al.

Serial No. 10/059,564

Filed January 29, 2002

Confirmation No. 7937

For OPTIMUM DENSITY TERMITE BAIT COMPOSITION

Examiner Neil S. Levy

September 24, 2003

LETTER TO THE PATENT AND TRADEMARK OFFICE

TO THE COMMISSIONER FOR PATENTS,

SIR:

This is in response to the Office action of September 2, 2003.

The Examiner has required restriction under 35 U.S.C. 121 to one of the following:

- I. Claims 1-8 drawn to compositions.
- II. Claims 9-19 drawn to methods for monitoring and controlling termite infestations; and
- III. Claims 20-24 drawn to methods for controlling termite infestations.

Applicants respectfully traverse the restriction requirement. The patent statute (35 U.S.C. 121) provides for a restriction requirement where two or more independent **and** distinct inventions are claimed in one application. According to Section 802.01 of the MPEP, the term "independent" is interpreted by the Patent Office to mean that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect. In the present instance, there is a clear and disclosed relationship between claim Groups I, II, and III in that the compositions of claims 1-8 are used in the methods of claims 9-19 and 20-24. Therefore, though these groups of claims may define "distinct" inventions which are patentable over each other, they are not independent as required by Section 121 of the statute. Accordingly, withdrawal of the restriction requirement is respectfully solicited.

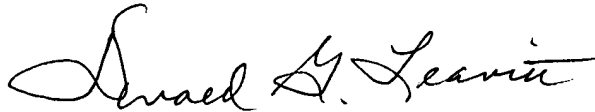
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In accordance with 37 C.F.R 1.143, applicants elect Group I (i.e. claims 1-8) as the invention to be examined in the event the restriction requirement is maintained. Claims 1-8 are drawn to compositions in compacted form for use for termite monitoring and control.

The Examiner has also required election of a single disclosed species under 35 U.S.C. 121 for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicants traverse this election of species requirement and contends that it would not be unreasonable for the Examiner to examine each of the disclosed and claimed species in the present application under 37 C.F.R. 1.46. Even though applicants traverse the election of species requirement, applicants elect claim 5 as the single disclosed species for prosecution on the merits, claim 5 being directed to the species wherein the composition of claim 1 additionally contains an active ingredient for killing or controlling termites. It is understood that upon allowance of a generic claim, applicants will be entitled to the allowance of various species claims.

In view of the foregoing, early examination of all claims herein on the merits is respectfully requested. If applicants' response is deemed incomplete in any way, the Examiner is invited to telephone applicants' undersigned attorney for further discussion and compliance with the Examiner's requirements.

Respectfully submitted,



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